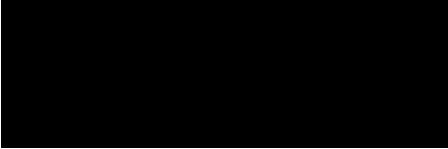




U.S. Citizenship  
and Immigration  
Services

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FILE:



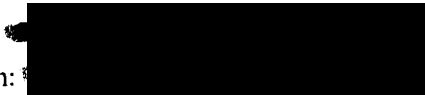
Office: HOUSTON

Date:

11/11/04

IN RE:

Obligor:

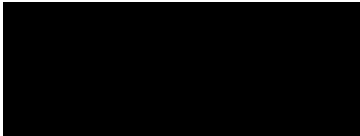


Bonded Alien:

IMMIGRATION BOND:

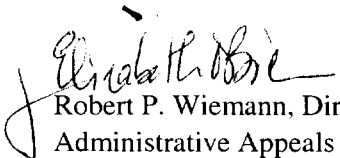
Bond Conditioned for the Delivery of an Alien under Section 103 of the  
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on October 23, 2000, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 18, 2002, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on December 11, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On January 10, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien was unable to appear on December 11, 2002 because he had an emergency brain surgery scheduled on December 10, 2002.

The regulations at 8 C.F.R. § 103.6(c)(3) provides that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(e) provides that a bond is breached when there has been "substantial violation of the stipulated conditions of the bond."

"Substantial performance" exists where there has been no willful departure from the terms or conditions of a bond, where the conditions have been honestly and faithfully complied with and the only variance from their strict and actual performance consists of technical or unimportant occurrences. "Substantial violation" exists where there is a willful departure from the terms or conditions of the bond or the failure to comply or adhere to the essential elements of those terms or conditions. *See Matter of Nguyen*, 15 I&N Dec. 176 (Reg. Comm. 1975), *Matter of Arbelaez-Naranjo*, 18 I&N Dec. 403 (Reg. Comm. 1983).

Where there is a variance from the strict and literal performance of the conditions of a delivery bond, an obligor must establish substantial performance, which is of benefit to the government. Proceedings regarding administrative stays of deportation before a field office director or the BIA are set forth by regulation. Failure of the obligor to seek an administrative stay of removal from either the field office director or the BIA prior to the day demanded for the alien's delivery and surrender, is ample evidence that the conditions of the bond were not accidentally violated.

In *Matter of Allied Fidelity Insurance Company*, 19 I&N Dec. 124 (Comm. 1984), it was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. § 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;
- (c) Whether the actions which constitute the violation were committed in good faith; and
- (d) Whether the alien took steps to make amends, or to put himself in compliance.

The record reflects that in November 2002, evidence of the alien's scheduled December 10, 2002 surgery was provided to ICE. On December 6, 2002, counsel filed a motion to reopen and request for stay of deportation

before the Board of Immigration Appeals (BIA). There is no automatic stay of deportation upon the filing of a motion to reopen or reconsider, and the record does not reflect that a stay of deportation was granted.

Following the guidelines contained in *Matter of Allied Fidelity Insurance Company, supra*, the alien's failure to appear for deportation on December 11, 2003 was not unintentional but constituted a medical emergency beyond his control. Counsel's efforts to extend the date of departure were in good faith. The record does not reflect that the obligor was instructed to surrender the alien immediately after his discharge from the hospital. Based on the foregoing, a subsequent Form I-340 should have been issued with a new demand date. As such, the Notice-Immigration Bond Breached is not valid.

**ORDER:**    The appeal is sustained. The district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.